

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**BWXT-Pantex, LLC**

**Amarillo, Texas**

**Employer**

**and**

**Case No. 16-RC-10723**

**METAL TRADES COUNCIL OF  
AMARILLO, TEXAS, AND VICINITY**

**Petitioner**

**DECISION AND ORDER**

Metal Trades Council of Amarillo, Texas and Vicinity, hereinafter referred to as Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the following employee classifications in the Employer's Fire Department: lieutenants, captains and battalion chiefs. Petitioner currently represents approximately 1,100 employees of the Employer that are located at the BWXT Pantex plant in Amarillo, Texas. The existing collective bargaining unit consists of: all production and maintenance unit including engineering division inspectors, analysts, process auditors, and clerical employees, including technical library clerical personnel, janitors and matrons, laundry and changehouse employees and laundry and changehouse clerical employees, cafeteria employees and cafeteria clerical employees, firefighters and Fire Department clerical employees, mechanical department clerical employees, production division clerical employees, industrial engineering department clerical employees and radiations safety technicians; excluding personnel department clerical employees, all hospital employees, clerical employees in the guard department, all other main office clerical employees, including timekeepers, guards and

supervisory employees as defined in the National Labor Relations Act, as amended. Through this proceeding Petitioner seeks a self-determination election so that employees in the three Fire Department classifications may decide whether they desire to be included in the existing collective bargaining unit in accord with the Board's decision in *Armour & Co.*, 40 NLRB 1333 (1942) and *The Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). The current number of the petitioned-for inclusions into the existing bargaining unit consists of 13 lieutenants, three captains and two battalion chiefs. There is no local bargaining history by the parties regarding the petitioned-for employees although they have been excluded from the existing collective bargaining unit that has been in place since about 1952. A hearing officer of the Board held a hearing and the parties filed briefs with me.

At the time of the hearing 59 of 61 classifications in the Fire Department were filled. There is one vacancy in two job classifications: battalion chief and lieutenant.

## **I. ISSUE**

The issue presented in this case is whether the Fire Department lieutenants, captains and battalion chiefs are supervisors within the meaning of the Act and/or managerial employees and if they are not, do they share a sufficient community of interest with employees in the existing bargaining unit. Petitioner contends these employees are not supervisors or managerial employees and they share a community of interest with bargaining unit employees. Employer contends these employees are supervisors and/or managerial employees and should not be included. If found not to be supervisors and/or managerial employees, the Employer argues they should nevertheless be excluded from the existing bargaining unit because they lack a community of interest with represented employees. Thus, the principal issue is whether or not these employees are supervisors within the meaning of the Act, for if they are supervisors, they will be excluded by operation of the Act. Secondary issues are whether the petitioned-for

employees are managerial and if not, whether there is a sufficient community with represented employees that an election should be authorized.

For the reasons set forth below, I find the petitioned-for employees are supervisors within the meaning of the Act. I further find that certain of the petitioned-for employees also perform managerial functions that results in their exclusion from the existing bargaining unit. Finally, I find these employees do not enjoy a sufficient community of interest with bargaining unit employees to include them in the existing bargaining unit.

To lend context to my discussion of the issue, I will provide an overview of the Employer's operations to the extent necessary for my discussion of the issues, followed by a statement of material facts and legal analysis.

## **II. OVERVIEW OF EMPLOYER'S OPERATIONS**

BWXT-Pantex, LLC operates a plant in Amarillo, Texas where it manufactures, disassembles, and reconditions nuclear weapons. Several thousand employees work at the plant. The Employer maintains its own Fire Department that exists to address fire and safety issues at the plant. It also maintains a mutuality agreement with the surrounding counties to assist these communities with their fire and safety needs when possible. The Fire Department has had as many as 600 calls of one kind or another in a year.

The top of the organizational structure in the Fire Department begins with Fire Chief Mike Brock. Reporting directly to him are the Budget/Logistics lieutenant and the secretary. Although Brock is the department head, the record establishes that he delegates supervision of Fire Department bargaining unit employees to the officers under his supervision. There are two major divisions in the Fire Department: the support section and the response or operations section. Each division is headed by an assistant chief. The working hours of the chief and assistant chiefs are from 8:00 a.m. to 4:30 p.m. Reporting to the assistant chief (Bill Ho-Gland)

in the support section are: a haz-mat lieutenant, a fire prevention captain (currently vacant), a fire prevention lieutenant, a fire prevention/pre-plans lieutenant, technical compliance/health and safety officer (a lieutenant), a training captain and two training lieutenants. Working hours for support section employees are from 8:00 a.m. to 4:30 p.m. In the response section, reporting to the assistant chief (Shannon Lanier), are three battalion chiefs who each cover a twenty-four hour shift - A, B and C shifts. Currently, the B shift battalion chief position is vacant. Under each battalion chief is a shift captain, a shift lieutenant, five paramedics, six motor pump operators (MPOs) and two firefighters. B shift Captain Jason Clark, as the ranking officer, is essentially acting in the role of B shift battalion chief. The Fire Department secretary, paramedics, MPOs and firefighters are in the existing bargaining unit represented by Petitioner.

Employees in the petitioned-for classifications are generally referred to as an “officer” of the Fire Department. The record reveals that in the absence of the battalion chief, the captain or lieutenant may and will act as the shift officer.

Twelve different international unions represent different segments of the employee population at the plant. These unions fall under the umbrella of Petitioner, which in turn, answers to the Metal Trades Department, AFL-CIO in Washington, D.C.

### **III. FACTS**

As referenced above the Employer employs 18 officers with three classifications. Shift officers schedule and conduct “muster meetings” - meetings held each morning to determine what activities will be conducted that day. Assignments are made by these officers to bargaining unit employees at these meetings. Although officers may substitute for each other, bargaining unit personnel may not substitute for any officer.

An engine company consists of an officer, an equipment driver and two firefighters. Each shift is structured to have two engine companies. With regard to a particular incident (e.g.,

accident or grass fire off premises), the shift officer may direct an engine company to the scene. Once on the scene and in the absence of an officer, the senior firefighter will take command of the scene. If an officer subsequently arrives at the scene, the officer may take command of the scene or may delegate to the firefighter continued command. Officers are distinguishable from other FIRE DEPARTMENT personnel by their clothing and hard hats; officers wear white shirts with gold badges and collar brass and red or white helmets while in the field, depending on their rank. Bargaining unit members wear blue shirts with silver badges and no collar brass. Firefighters wear yellow helmets and paramedics wear blue helmets.

With respect to the issue of pay, the record reflects that all officers are salaried employees who are paid overtime at a straight-time rate that is determined by converting their monthly salary into an hourly wage rate. Officers are not required to work 40 hours to receive 40 hours of pay. They may avoid taking time off by switching their shifts or portions of their shifts with other officers. Bargaining unit employees (e.g., firefighters, paramedics) are paid on an hourly basis and receive one and a half times their hourly pay for overtime. Hourly paid workers do not have the same flexibility to take time off although they may switch shifts with prior notice to management and approval of the shift officer.

Officers have separate sleeping quarters from bargaining unit employees, but do share the same kitchen and break room. Officers also have offices where they have desks and access to computers to manage their administrative duties. Bargaining unit employees do not have offices. All officers attend an officer meeting held once a month. Although a Union official may attend as an observer, no other bargaining unit employees are allowed to attend the officer meeting.

Plant managers, supervisors and officers of the Fire Department have the same health insurance plan as bargaining unit employees. However, plant managers and supervisors, as well

as the officers addressed herein are required to pay a twenty percent premium instead of the 10 percent premium available to bargaining unit employees.

### **Overtime**

Established Employer guidelines require minimal staffing levels of 14 Fire Department T employees. The Employer generally maintains sixteen employees plus a shift officer during each shift. This level of staffing provides the shift officer with some flexibility to address absences due to illness, vacation or other employee emergencies. However, because of unscheduled demands on the Fire Department (e.g. grass fires on or off site, accidents, chemical spills, etc.), the shift officer has discretion to grant or deny time off. With the ability to grant time off, shift officers have the corresponding ability to authorize overtime. Although overtime assignments are addressed in the existing collective bargaining agreement (i.e. seniority provisions apply), the decision to authorize overtime remains with the shift officer.

### **Discipline**

Within the Fire Department, shift officers may and do issue discipline to bargaining unit employees (i.e., firefighters). These disciplinary warnings are called “verbal counseling” that are written and maintained within the department by the issuing officer. A verbal counseling is effective for one year. One verbal counseling by itself does not adversely impact the employment relation, but cumulatively may result in disciplinary action. Officers may suspend employees under their command, but such suspensions are with pay. An example of this involved a paramedic who was sent home, i.e., suspension with pay, for complaining to the shift officer. Suspensions and higher levels of discipline involve the Chief or assistant chiefs and the Employer’s labor relations department.

### **Grievances**

The existing collective-bargaining agreement contains a grievance procedure. The first step of the grievance procedure allows the aggrieved employee to deal directly with the immediate supervisor/foreman – in the Fire Department that would be the shift officer. A shift officer has the ability to resolve a grievance at the preliminary step without the need to confer with higher management. An example of this would involve a shift officer assigning overtime to a less senior firefighter. If, upon an employee/union steward complaint, the shift officer recognizes the error of the assignment, the shift officer may instruct the Fire Department secretary to schedule the aggrieved firefighter for the next overtime assignment.

### **Human Reliability Program**

The Department of Energy has an evaluation program that is designed to guard against the compromise of facilities like the Employer's, where researching, testing, producing, disassembling and transporting nuclear weapons occurs. The "Human Reliability Program" (HRP) is an evaluation program to ensure an employee may work safely and is not a security risk around weapons stockpile and nuclear material. Part of the evaluation includes a review by the immediate supervisor. This evaluation is critical as firefighters must have unescorted access to the entire facility. Officers are required to take HRP supervisor training so that they may properly evaluate employees. In the Fire Department all officers, with the exception of two new officers, have received HRP supervisor training. The record contains documentary evidence establishing that Fire Department officers – battalion chiefs, captains and lieutenants – have signed HRP evaluations for bargaining unit employees. The immediate supervisor is required to make this evaluation: officers do not consult with upper management when making these evaluations.

### **On Ramp**

The Employer maintains an evaluation program called On Ramp, which is available to employees who are interested in upward mobility. In the Fire Department, bargaining unit employees seeking officer positions must submit applications to enter On Ramp. Employees must demonstrate leadership abilities, complete a self-assessment and request their supervisor to complete an assessment form on their behalf. It is undisputed that officers in the Fire Department have the authority to complete and have completed supervisor On Ramp assessments for bargaining unit employees.

All of the Fire Department officers, from chief to lieutenant, and employees, with the possible exception of secretary, are state certified as firefighters and are required to maintain that certification, an annual requirement.

### **Support Section Officers**

Support Section officers have specifically assigned tasks, as generally reflected by their respective titles. For example the Budget/Logistics Lieutenant is responsible for oversight of the Department's budget. He may authorize expenditures up to \$5,000 without the Chief's approval. As procurement officer, this lieutenant communicates with vendors regarding bid specification matters and is responsible for examining purchased equipment to ensure department specifications are met. As logistics officer, he serves on the Employer's Procurement Engineering Group (PEG) which consists of other procurement responsible employees from departments throughout the Plant. None of the PEG members are bargaining unit personnel.

The **haz-mat** lieutenant is responsible for handling hazardous materials throughout the plant. His duties cover the entire spectrum ranging from determining what hazardous material may come into the plant to responding to hazardous materials accidents. At the site of a spill, the **haz-mat** lieutenant surveys the situation, determines the level of response needed to eliminate the hazard and assigns and directs firefighters on spill containment, confinement and cleanup. He is



also responsible for training Fire Department personnel on the use, containment and clean-up of hazardous materials.

The fire prevention captain position is currently vacant. The two fire prevention lieutenants are responsible for fire prevention inspections and fire protection code inspections, activities that are conducted on a monthly basis. One officer is responsible for fire extinguisher compliance, inspection and replacement while the other is responsible for pre-fire plans for each building at the Plant. These officers assign and direct firefighters to conduct the inspections and pre-fire plan reviews. In fact, most of the physical work of inspecting is considered bargaining unit work that officers are prohibited by the collective-bargaining agreement from performing. Fire prevention officers are responsible for conducting fire evacuation drills and providing fire safety education to the entire plant. They also issue Hot-Work permits for the entire plant, i.e., no work that may potentially create a fire hazard (e.g., cutting, torching or welding) may be performed at the plant without the approval of these officers.

The FIRE DEPARTMENT is required to comply with a variety of federal, state, local plant orders, rules and regulations including the Code of Federal Regulations Department of Energy Orders that pertain to Fire Departments. Responsibility for ensuring that the Fire Department is in compliance lies with the technical compliance/health and safety officer, a lieutenant on control section. Thus, he must review all related documents and monitor the Fire Department's compliance with these requirements. Failure of the Fire Department to comply with any of the regulations could lead to fines. This officer also has the additional task of developing and managing the department's physical fitness program. He conducts the annual fitness evaluations for all Fire Department personnel and is the back-up assistant to the "A" shift battalion chief on the department's Breath Alcohol Testing program – required testing of the Employer's employees in return to duty, original suspicion and post accident situations.

Training lieutenants are responsible for the department's training program, i.e., they identify, develop, schedule, deliver and evaluate all training programs affecting Fire Department personnel. One of the training lieutenants also serves on the Employer's Division Training Coordinators program; this program includes non-bargaining employees from the Fire Department and Security Department skilled in training procedures. The Fire Department training coordinator determines the training needs of the department's employees and is responsible for working with plant training coordinators to ensure that department employees are in compliance with plant requirements. He is required to maintain training records for state required continuing education and monitor training reports to verify that Fire Department personnel have taken the necessary training to maintain their state certification as firefighters.

The record establishes that support section officers substitute for response or operations section officers in the Fire Department. When doing so, they have the corresponding authority over bargaining unit Fire Department employees - to make assignments, discipline employees, responsibly direct them and adjust bargaining unit employee grievances. Additionally documentary evidence was presented establishing that support section officers have exercised one or more of these responsibilities.

#### **IV. ANALYSIS**

##### **Supervisory Status**

As referenced above, the initial issue which must be analyzed in this case is the question concerning the alleged supervisory status of the Employer's Fire Department officers. In evaluating supervisory status, I first turn to the statutory definition. Section 2(11) of the Act defines the term of "supervisor" as "...any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or

effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” The Board has adopted the Sixth Circuit’s declaration that Section 2(11) should be interpreted in the disjunctive – “the possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class.” *Ohio Power Co. v NLRB*, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949); *Harborside Healthcare Inc.*, 330 NLRB 1334 (2000); *Pepsi-Cola Co.*, 327 NLRB 1062 (1998). The party asserting supervisory status bears the burden of proof. *NLRB v Kentucky River Community Care*, 121 S.Ct. 1861, 1866-1867 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999). Any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 fn. 8 (1999). Supervisory status is determined not by a person’s title or job classification, but by the individual’s duties. *New Fern Restorium Co.*, 175 NLRB 142 (1969). A supervisor must exercise independent judgment in performing the functions enumerated in the definition of supervisor. Finally, it is the possession of authority consistent with any indicia of the definition of supervisor, not the exercise of that authority that is the evidentiary touchstone. *Allstate Insurance Co.*, 332 NLRB 759 (2000). Thus, a person with supervisory authority is a supervisor within the meaning of the Act even though he/she has not yet exercised that authority. *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 fn.8 (2001).

The facts herein, which are largely undisputed, amply demonstrate that the petitioned-for FIRE DEPARTMENT officers – battalion chiefs, captains and lieutenants are supervisors within the meaning of the Act. That supervisory authority is established by their ability to assign, discipline and responsibly direct employees as well as their ability to adjust employee grievances. With the ability of the officers to cover for each other, each is vested with the same

general authority. That is to say, lieutenants as well as captains and battalion chiefs may and do run the muster meetings where the day's tasks are identified and appropriate assignments are made to firefighters, MPOs and paramedics. Officers make assignments to firefighters to work under the direction of support section officers, e.g., to conduct inspections or assist with inventory. When doing so, the officer takes into consideration the minimum complement necessary to maintain readiness at the plant – existing guidelines determine this number of personnel (14). However, because the Employer maintains a daily complement of 16 personnel, the officer has the flexibility to reassign as many as two employees per day to attend to other tasks, e.g., assist support section officers with inspections, inventory or other fire prevention duties. In case of emergency, the officer determines which of the two engine companies will be assigned to respond. Once on the scene the officer is responsible for making the assignments of how to address the emergency. One example presented on the record involved a lieutenant who, instead of allowing a building to burn down, assessed the situation and determined that entering the building to attack the fire might result in saving the building. The lieutenant ordered his firefighters to enter the building, the fire was quenched and the building was saved.

In addition to the above indicia of supervisory status, the record reflects that officers have the authority to discipline employees. An officer's authority to discipline an employee is demonstrated by the undisputed fact that they may and do issue written verbal counselings without consulting upper management. As noted above, a record of a verbal counseling is made and maintained in the Fire Department records. The verbal counseling is maintained for a year and may be utilized to determine whether higher levels of discipline are necessary based on repeated instances of the same conduct. A verbal counseling may lead to more severe discipline for the employee involved. These verbal counselings are used by management to address problems employees are having that affect work performance and are used to correct employee

behavior so as to eliminate the need for more severe discipline. They are, in fact, the initial level of discipline. As such, I find that these verbal counselings are discipline and that the possession and exercise of such authority is another indicia of supervisory status within the meaning of Section 2(11) of the Act.

An officer's ability to responsibly direct employees is revealed by the assignments that are made on a daily basis. The record reveals that on the scene of a building fire, the lieutenant, acting as the officer on the scene, directed firefighters to enter the building to attack the fire based on his assessment that the building could be saved. Instead of containing the fire, the lieutenant ordered firefighters into the building to quench the fire. The lieutenant's assessment proved to be accurate and the building was saved. Another example of responsible direction of employees work involves the haz-mat lieutenant, who undisputedly has the authority to direct firefighters to a hazardous materials spill and to direct them in the clean-up of said spill. It is the lieutenant who is responsible for determining how the spill should be contained and cleaned up based on his training, experience and applicable regulations.

The record also reflects that the Employer's Fire Department officers have the authority to adjust grievances. Specifically, all officers have the authority to represent the Employer at the preliminary step of the collective-bargaining agreement's grievance procedure and to adjust grievances at that stage of the process. In fact, the current collective-bargaining agreement mandates the participation of the officer in the grievance process:

"An employee having any matter relating to the provisions of this Agreement, or the performance by the Company of any obligation hereunder which he/she feels requires adjustment, will first discuss the matter with his/her immediate foreman or supervisor in order to give his/her foreman or supervisor a reasonable opportunity to resolve the problem." (Article 27, Sec. 5 D)

Undisputed testimony establishes that in the Fire Department, the supervisor could be any of the officers within the department, i.e., the officer under whom the bargaining unit

employee is working at the time. That officer has the authority to resolve the grievance and in doing so, is only limited by the provisions in the collective-bargaining agreement. Although the officer may not resolve a grievance by authorizing payments or expenses that are outside the provisions of the contract, no prior approval from upper management is otherwise needed to resolve grievances at this level.

Petitioner does not dispute that the officers in the petitioned-for unit have the authority to act in the above described manner. However, Petitioner argues that officers' exercise of such authority is of a routine or clerical nature and does not require the use of independent judgment. In support of this position, the Petitioner asserts that functions of the Fire Department are highly regulated by Fire Department guidelines, plant standards, internal operating procedures, work processes, work instructions as well as guidelines set forth by the Chief, Department of Energy (DOE), the National Fire Prevention Association (NFPA) and others. Notwithstanding this contention, as was made clear by Petitioner's own witness, these regulations are guidelines that allow officers to exercise discretion in their implementation.

The record reveals that the amount of discretion that officers have is quite extensive. It includes the authority to decide whether or not to send an engine company to an off-site emergency based on the demands on the Fire Department due to plant activities, to decide whether a firefighter will continue command on site after the officer's arrival, to decide whether to redirect resources (firefighters and equipment) from one scene to another or to direct additional resources to the scene, to decide how to address an emergency, to decide whether to grant or deny time off and to decide whether to order overtime. Collectively, if not individually, this level of discretion leads to the conclusion that officers exercise independent judgment in the performance of their duties and are supervisors within the meaning of Section 2(11) of the Act.

### **Secondary Indicia of Supervisor Status**

In addition to the finding of supervisory status based on factors described above, the record reveals the petitioned-for employees possess secondary indicia that militates in favor of finding supervisory status. A review of the facts summarized above reveals that the terms and conditions of employment of petitioned-for employees are substantially different from bargaining unit employees. As described above, battalion chiefs, captains and lieutenants wear different uniforms and hard hats from unit employees when in the field handling emergency calls. Thus, they are readily distinguishable from unit personnel to other Fire Departments in the community. Officers are salaried not hourly paid as are bargaining unit employees. See, *McClatchy Newspapers, Inc.*, 307 NLRB 773 (1992); *Little Rock Hardboard Co.*, 140 NLRB 264 (1962). Additionally, officers need not work forty hour weeks to receive a full salary, not so for bargaining unit employees. The Employer maintains separate sleeping quarters for its Fire Department officers. Additionally, officers have offices and access to computers. Bargaining unit employees do not enjoy such benefits. Officers receive additional training, including supervisory training that is not available to bargaining unit members. Officers attend monthly officer meetings which, by definition, exclude bargaining unit employees. The record also reveals that officers are precluded from performing bargaining unit work. In fact grievances have been filed against officers for performing unit work, e.g., inspecting fire extinguishers.

Although covered by the same health benefits plan, officers, like all other managers and supervisors at the Plant, are required to pay twenty percent of the health insurance premiums while bargaining unit employees pay ten percent. Seniority is not a consideration in assignments for officers or in selecting officers (e.g., lieutenants) for higher officer positions. Firefighters, on the other hand, have the benefit of seniority to move into higher rated bargaining unit positions.

Finally, although the ratio of supervisor to bargaining employees appears high, if petitioned-for classifications were included in the bargaining unit, the Fire Department would

have only three supervisors (the Chief and two assistant chiefs) for 58 Fire Department employees. As these three supervisors' hours are 8:00 a.m. to 4:30 p.m., a finding that none of the petitioned-for employees are supervisors would result in fifteen and one-half hours of a 24-hour shift without a supervisor. See, *Pennsylvania Truck Lines*, 199 NLRB 641 (1972). Thus, this secondary evidence of supervisory authority supports the conclusion that battalion chiefs, captains and lieutenants fall within the Act's definition of supervisor.

### **Managerial Employees**

As referenced above, based on the authority of support section officers to substitute for officers on the response or operations section of the Fire Department, with the corresponding authority to make assignments, discipline employees, responsibly direct and adjust their grievances and the documentary record that these officers have exercised one or more of these responsibilities, I find they, too, are supervisors within the meaning of Section 2(11) of the Act.

In its brief, the Employer raises an additional argument regarding exclusion of certain officers. It contends that the budget/logistics officer, **haz-mat** officer, technical compliance/health & safety officer and the training officers should also be excluded from the existing bargaining unit because they are managerial employees. I also find the record demonstrates these support section officers fall within the category of managerial employees and will exclude them on this additional basis as well.

Under established Board law, managerial employees . . . "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980). Managerial employees exercise discretion within or independent of employer policy and are aligned with management. *Id.* at 683. Under Board law, an employee may be excluded as a managerial employee only if (s)he . . . "represents management interests by taking or recommending discretionary actions that



effectively control or implement employer policy.” *Id.* An employee is not elevated to managerial status by exercising some judgment within parameters set by higher management. A final determination of whether an employee is managerial rests on the degree of discretion exercised by the employee. *Bell Aerospace Co.*, 416 U.S. 267, 286 (1974).

As generally described above, support section personnel, consistent with their respective titles, perform specific functions for the Employer. Each officer is responsible for implementing the Employer’s policies and verifying that Fire Department employees comply with those policies. The budget/logistics lieutenant manages the department’s budget, has (limited) spending authority and verifies vendor compliance with bid specifications that includes rejecting purchases that do not meet specifications. The haz-mat lieutenant’s duties cover the entire plant as he is management’s lead representative when it comes to hazardous materials. This includes training Fire Department personnel on use, containment and clean-up of such materials. The technical compliance/health and safety officer is responsible for ensuring that the Fire Department complies with various federal, state and local regulations on behalf of the Employer. The training lieutenants manage all the training requirements of Fire Department personnel. They identify, develop, schedule, deliver and evaluate the training programs and ensure that Fire Department personnel are properly certified to conduct their jobs. The duties of each of these individuals align them with management because they assist in implementation of employer policy. Accordingly, these individuals will be excluded for the additional reason that they are managerial employees.

### **Community of Interest**

Petitioner asserts that a sufficient community of interest exists between petitioned-for employees and employees in the existing bargaining unit. Factors considered by the Board in making community of interest determinations include the degree of functional integration,

common supervision, the nature of employee skills and functions, interchangeability and contact among employees, work situs, general working conditions and fringe benefits. All relevant factors must be considered in determining whether a community of interest exists. See, *Hotel Services Group, Inc.*, 328 NLRB 116 (1999).

In addition to the findings above that serve as a basis for excluding petitioned-for employees from the existing bargaining unit, review of the record leads to the conclusion that a community of interest between petitioned-for employees and those already in the bargaining unit does not exist. The extent of their community of interest is limited to the fact that all Fire Department personnel are certified as firefighters, work out of the same department and use the same kitchen facilities. Officers are not hourly paid and have flexibility when it comes to leave policies. Their conditions of employment are different, as officers have separate bunking quarters and have offices, desks and computers to perform the administrative component of their jobs. Seniority is not applicable to petitioned-for employees and they receive substantially more training than is available to bargaining unit employees. Officers do not perform bargaining unit work as such conduct is prohibited by the bargaining unit employees' collective bargaining agreement. There is no evidence of interchange between petitioned-for employees and bargaining unit personnel although bargaining unit employees have promoted into officer positions. Finally, these officers evaluate and discipline bargaining unit employees. Accordingly, I find that the petitioned-for employees, battalion chiefs, captains and lieutenants in the Fire Department do not have a sufficient community of interest to include them in the existing collective bargaining unit.

The evidence summarized above, plus the record as a whole establishes several bases for excluding the petitioned-for Fire Department employees. I find that they are supervisors within the meaning of Section 2(11) of the Act for the reasons set forth above. I further identified

above secondary indicia of supervisory status that supports my determination that they are supervisors. Additionally, I have found that support section officers are managerial employees and should be excluded from the existing bargaining unit on that basis. Finally, the record establishes that there is not a sufficient community of interest between petitioned-for employees and bargaining unit employees so as to include them in the existing bargaining unit. Accordingly, the petition is hereby dismissed.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, BWXT-Pantex, LLC, a Delaware corporation with an office and a place of business in Amarillo, Texas, is engaged in the business of manufacturing, disassembling, and reconditioning nuclear weapons. During the past 12 months, the Employer has sold and shipped goods valued in excess of \$50,000 directly to points outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.

## **ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and hereby is, dismissed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **June 9, 2006**. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relation Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance may also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlrb.gov](http://www.nlrb.gov).

**DATED: May 26, 2006 at Fort Worth, Texas.**

/s/ Martha Kinard  
**Martha Kinard, Acting Regional Director**  
**National Labor Relations Board**  
**Region 16**  
**Room 8A 24, 819 Taylor Street**  
**Fort Worth, Texas**